

STATE OF INDIANA)
)
COUNTY OF ALLEN)

RICHARD PHILLIPS,)
)
 Plaintiff,)
)
 v.)
)
KELLEY CHEVY, LLC,)
)
 Defendant.)

SS: IN THE ALLEN SUPERIOR COURT

CAUSE NO. _____

COMPLAINT

Plaintiff alleges against Defendant that:

1. The Plaintiff is Richard Phillips, a Black/African American male who filed a Charge of Discrimination with the EEOC (No. 470-2020-02997) against Kelley Chevy, LLC, a copy of which is attached hereto and made a part hereof as Exhibit "A". The EEOC issued a Dismissal and Notice of Rights on February 22, 2021 (Exhibit "B"), and this Complaint has been filed within ninety (90) days after receipt thereof.
2. Defendant Kelley Chevy, LLC is a company doing business at 5220 Value Drive, Fort Wayne, Indiana 46808. Defendant is an "employer" for purposes of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII"). Defendant is obligated to treat minorities the same as Caucasian employees with respect to the terms, conditions, and contractual benefits of employment pursuant to 42 U.S.C. § 1981.
3. Plaintiff alleges that he was discriminated against, retaliated against, and discharged on account of his race and color, and because of his sex, for the reasons, and based upon the grounds, set forth in EEOC Charge of Discrimination No. 470-2020-02997.

4. Plaintiff experienced, and was subjected to, a hostile work environment based upon his race and color.
5. Plaintiff was subjected to disparate discipline and was terminated for allegedly sending text messages to a customer, which is a pretextual reason for termination (to mask the real reason of Plaintiff being Black and reporting and complaining about race discrimination on the job) in that the customer in question was a friend of Plaintiff's prior to the car sale, and because it was Jeremy Todd (Caucasian salesman) who complained and not the customer.
6. A similarly-situated Caucasian female employee who had sent inappropriate messages to a male was not discharged as was the Plaintiff. Rather, this Caucasian female employee who had been accused of sexual harassment was not terminated and kept her job, and was therefore treated more favorably than Plaintiff under similar circumstances.
7. As a direct and proximate result of Defendant's race discrimination and retaliation against the Plaintiff, allowing Plaintiff to be subjected to a racially-hostile work environment, permitting Plaintiff to be the subject of disparate discipline based upon race and sex, and retaliating against Plaintiff for his reporting racial harassment in the workplace, Plaintiff lost his job and job-related benefits including income. Plaintiff experienced emotional distress, mental anguish, humiliation, embarrassment, inconvenience, and other damages and injuries. Plaintiff seeks compensatory damages.
8. Defendant's actions were intentional and in reckless disregard of Plaintiff's federally

protected civil rights warranting an imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendant, for compensatory damages, punitive damages, reasonable attorney's fees and costs, and for all other just and proper relief in the premises.

JURY DEMAND

Pursuant to Rule 38 of the Indiana Rules of Trial Procedure, Plaintiff demands a trial by jury in this action.

Respectfully submitted,

CHRISTOPHER C. MYERS & ASSOCIATES

/s/Christopher C. Myers

Christopher C. Myers, #10043-02
809 South Calhoun Street, Suite 400
Fort Wayne, IN 46802
Telephone: (260) 424-0600
Facsimile: (260) 424-0712
E-mail: cmyers@myers-law.com
Counsel for Plaintiff

01:38:59 p.m. 06-28-2020

JUN/29/2020/MON 02:06 PM

Equal Employment Opportunity Commission
Indianapolis District Office

RECEIVED 6 29 2020

EEOC Form 5 (11/00)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA 470-2020-02997 <input checked="" type="checkbox"/> EEOC	
Equal Employment Opportunity Commission and EEOC <i>State or local Agency, if any</i>			
Name (Indicate Mr., Ms., Mx.) Richard Phillips		Home Phone (Incl. Area Code) 260-564-3322	Date of Birth
Street Address 12992 Page Hill Court, Fort Wayne, IN 46818		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name Kelley Chevrolet		No. Employees, Members 16+	Phone No. (Include Area Code) 260-255-6942
Street Address 5220 Value Drive, Fort Wayne, IN 46808		City, State and ZIP Code	
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) PREGNANCY <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (specify)		DATE(S) DISCRIMINATION TOOK PLACE Began Latest November 2019 March 2020 <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): I. The Complainant is Richard Phillips, a qualified black / African American male employee of the Respondent's at all times relevant to this Charge. Mr. Phillips contends that he was discriminated against, harassed, and/or retaliated against by the Respondent on the basis of his sex, and his color/race, in violation of his federally protected rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e ("Title VII). (In the alternative, he contends he was discriminated against and/or retaliated due to his color/race, against in violation of his rights under 42 U.S.C. § 1981.) II. The Respondent is Kelley Chevrolet, a/k/a Tom Kelly Chevrolet, a company doing business at 5220 Value Drive, Fort Wayne, IN 46808. At all material times to this Charge, the Respondent was an "employer" for the purposes of Title VII (and 42 U.S.C. § 1981). III. The Complaint was employed by the Respondent from June 2019, until his wrongful termination in March 2020. He was a sales man for the Respondent. The Complainant was the only black/ African American salesman at his dealership.			

Continued on Page 2

F. A

JUN/29/2020/MON 02:06 PM

Equal Employment Opportunity Commission
Indianapolis District Office
RECEIVED 6-29-2020

- IV. The Complainant performed above and beyond the reasonable expectations of the employer. The Complainant came into work early on a daily basis, and worked extremely hard to provide excellent performance to the Respondent and superior service to its customers. In November 2019, Complainant set a store record for car sales, and he was top salesman at his store for both November and December of that year.
- V. Beginning in December 2019, some of Complainant's coworkers made racially offensive and derogatory comments and statements to him. For example, employee Ron Ahr frequently would tell the Complainant "I hate Monday"; on around December 12, 2019, Ahr said this to the Complainant even though it was a Thursday. Another employee, named Corey Reichond then informed the Complainant that the phrase was actually being used as a code for "I Hate N*ggers".
- VI. On another occasion that happened around January 7, 2020, Complainant's coworkers placed a note on the Complainant's locker that said "N*gger this ain't your business go back to the hood".
- VII. In addition, manager John Hoffman habitually singled the Complainant out for over-scrutiny, and abuse, but not similarly situated non-black/non-African-American employees. Hoffman also gave the Complainant "a hard time" and frequent unjustified criticism.
- VIII. In one incident, that occurred around February 20, 2020, Huffman balled up the Complaint's business card in front of a customer and told the customer that the Complainant wasn't working for him, and Hoffman would give the Complainant's deal to a white salesman. Huffman's offensive conduct was so disturbing to the customer, that they complained to the Respondent's owner Tom Kelley and individuals in upper management about how the Complainant had been mistreated.
- IX. A second manager, named Jeremy Todd, also singled the Complainant out for over-scrutiny and unwarranted criticism, frequently threatening to complain about the Complainant to Human Resources without justification.
- X. Around February 22, 2020, Complainant complained to the Respondent's Vice President and manager Brian Lytle about the hostile and racially offensive comments that his coworkers were making. Brian's response was "every new guy gets treated this way..."
- XI. On about March 15, 2020, Complainant was called into an office and a representative or lawyer from Human Resources accused the Complainant of harassing a female customer, by allegedly sending the customer inappropriate text messages after selling her a car. The customer in question however had known the Complainant and they had been friends prior to the car sale. Furthermore, the Complainant learned that it had been Jeremy Todd that complained not the customer.
- XII. The Respondent terminated the Complainant for allegedly sending unwanted, inappropriate text messages to the female customer. About a month earlier, though, a non-black/ non-African American female employee named Nicole Rider, had been accused of sexual harassment, and she was not fired.
- XIII. Complainant contends that the proffered reason for termination was false and pretextual, and that in reality the Respondent discriminated against, harassed and retaliated against him on the basis of his color/ race (black/African American) and discriminated against him on the basis of his sex (male), in violation of the Complainant's rights under Title VII (and § 1981.)

Continued on Page 3

01:33:58 p.m. 06-29-2020

JUN/29/2020/MON 02:07 PM

Equal Employment Opportunity Commission
Indianapolis District Office
RECEIVED 6-29-2020

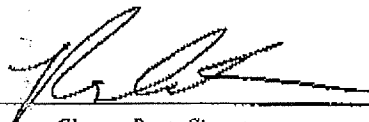
- XIV. The Respondent's unlawful discriminatory, harassing and/or retaliatory conduct was the direct and proximate cause of the Complainant suffering the loss of his job and job-related benefits including income, and also subjected the Complainant to inconvenience, mental anguish, emotional distress and other damages and injuries. The Complainant is entitled to recover compensatory damages and reasonable attorney fees and costs against the Respondent.
- XV. The Respondent's unlawful discriminatory, harassing and/or retaliatory conduct was intentional, knowing, willful, wanton, and in reckless disregard of the Complainant's federally protected rights under Title VII and 42 U.S.C. § 1981. The Complainant is entitled to punitive damages against the Respondent.

I want this charge filed with both the BBOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

6-29-20

Date



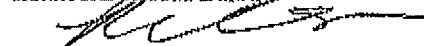
Charge Party Signature

NOTARY - When necessary for State and Local Agency Requirements



I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT



SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

6-29-2020

LORI KAY KOLB

Seal

Notary Public - State of Indiana
Allen County

My Commission Expires Dec 20, 2024

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Richard Phillips**
12992 Page Hill Court
Fort Wayne, IN 46818

From: **Indianapolis District Office**
101 West Ohio Street
Suite 1900
Indianapolis, IN 46204



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

470-2020-02997

Michelle D. Ware,
Enforcement Supervisor

(463) 999-1184

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fall to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☒ The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

FEB 22 2021

Enclosures(s)

Michelle Eisele,
District Director

(Date Issued)

cc:

Monica Senk
VP - HR & Compliance
KELLEY CHEVROLET
5220 Value Drive
Fort Wayne, IN 46808

Christopher C. Myers
CHRISTOPHER C. MYERS & ASSOCIATES
809 S. Calhoun Street
Suite 400
Fort Wayne, IN 46802

F. B